



California Fair Political Practices Commission

October 13, 1988

William T. Bullard
Attorney at Law
Shelter Point Business Center
591 Redwood Highway, Suite 2355
Mill Valley, CA 94941

Re: Your Request for Advice
Our File No. A-88-359

Dear Mr. Bullard:

This is in response to your request for advice on behalf of Commissioner Frank Bellows regarding his responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} It confirms the tentative decision conveyed to Mr. Bellows on September 28 in response to his telephone request for immediate assistance in this matter.

QUESTION

The City of El Cerrito has designated "Target Area 8" as one of the city's redevelopment project areas. Commissioner Bellows has an ownership interest in property which is immediately adjacent to and across the street from Target Area 8. May Commissioner Bellows participate in decisions regarding street abandonment and use permits related to Target Area 8?

CONCLUSION

Commissioner Bellows is prohibited from participating in decisions regarding street abandonment and use permits for Target Area 8.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

Commissioner Bellows is on the El Cerrito Planning Commission which renders decisions regarding land use matters. As part of the city's redevelopment plan, the city has created certain redevelopment project areas. One such area is Target Area 8.

Commissioner Bellows has an ownership interest in property which is immediately adjacent to and across the street from Target Area 8. The distance from Target Area 8 to Commissioner Bellows' property is approximately 40 to 45 feet. His interest in the property is worth more than one thousand dollars. The current use of the property is commercial in nature.

The land use proposed for Target Area 8 consists of a retail/automotive use project of approximately 42,000 square feet and would consolidate approximately ten parcels. In order to accomplish this project, the city will be required to abandon portions of two streets and to issue use permits. The planning commission will be called upon to render advisory decisions regarding street abandonment and also render decisions on the use permits. The decisions regarding use permits are final unless appealed to the city council.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(b)-(d).

Mr. Bellows is a public official^{2/} and is therefore prohibited from making, participating in, or using his official position to influence any governmental decision in which he has a financial interest. Mr. Bellows has an ownership interest in real property of over one thousand dollars. Consequently, he must disqualify himself from any decision which would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on his ownership interest in the real property.

The purpose of any redevelopment plan is to promote sound development and redevelopment of blighted areas. The anticipated result of redevelopment is an increase in property values and an improved business climate within the project area, which benefits the community as a whole. (In re Oglesby (1975) 1 FPFC Ops. 71, copy enclosed. See also Downey Community Development Commission v. Downey Cares (1987) 196 Cal. App. 3d 983.)

In re Gillmor (1977) 3 FPFC Ops. 38 (copy enclosed), the Commission considered whether Mr. Gillmor, the Mayor of Santa Clara was prohibited from voting on a decision concerning a redevelopment project. Mayor Gillmor was the owner of six parcels of real property in the Franklin Mall complex, located several hundred feet from the proposed redevelopment project. The project in question was a nine-story senior citizens' housing complex, including residential units, related senior citizens' facilities, and 6,400 square feet of commercial space for rental to small commercial shops.

The Commission found that Mayor Gillmor was required to disqualify himself from participating in decisions on the project. In reaching that conclusion, the Commission focused on the intended effects of redevelopment:

^{2/} Despite the advisory nature of some of the decisions rendered by the planning commission, by virtue of its power to make other final decisions, the members of the planning commission are deemed to be public officials within the meaning of Section 87100, et seq. (Regulation 18700(a), copy enclosed.)

Redevelopment zones are created for the precise purpose of upgrading portions of a community and creating a positive financial impact on investments and property values in the zone. Ideally, new businesses are attracted, increased sales and services result, the value of the redeveloped property, and property in close proximity to it, increases because of more productive use, and the community, in general, benefits through a broadened tax base. Thus, it is intended and anticipated that redevelopment will have a financial impact on real property and businesses located in and near the redevelopment zone.

In the present case, we think it is "reasonably foreseeable" that these types of positive financial consequences will occur if the property in question is zoned and the senior citizens' housing complex constructed. Moreover, we think it is clear that Mayor Gillmor's interests will be affected. The decision to rezone and to construct the new housing complex foreseeably will bring additional renters, visitors, shoppers and foot traffic, in general, into the area. Accordingly, more potential customers will be available for Mayor Gillmor's sources of income.... Finally, if these various businesses do enjoy an increase in business, their locations will become more desirable and real property values, including those of Mayor Gillmor's property, foreseeably will be enhanced.

In re Gillmor, supra, at pp.
41-42.


Based on the Gillmor Opinion, we conclude that it is reasonably foreseeable that Mr. Bellows' real property interest will be materially affected by the decisions regarding Target Area 8. The proposed retail/automotive use is likely to have a significant impact on businesses within and around Target Area 8. Since the current use of Mr. Bellows' property is commercial in nature, it is particularly likely that the improved business in the area will bring more shoppers and foot traffic to the area and thus result in an increase in the value of the property. The very purpose of the redevelopment in Target Area 8 is to improve the properties in a blighted area. Accordingly, Mr. Bellows must disqualify himself from participating in decisions on street abandonment and issuance of use permits.

William T. Bullard
October 13, 1988
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If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths
General Counsel


By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld

Enclosures

WILLIAM T. BULLARD, JR.,

ATTORNEY AT LAW

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(415) 381-8600

September 12, 1988

John McLean, Esq.
Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Re: **Request for Advice Letter - El Cerrito Planning
Commissioner Frank Bellows**

Dear Mr. McLean:

As discussed with you in our telephone conversation of September 6, 1988, I am hereby requesting an advice letter regarding the referenced El Cerrito official. The pertinent facts regarding this matter are set forth below:

Commissioner Bellows is on the El Cerrito Planning Commission, which renders decisions regarding land use matters in the City of El Cerrito. Certain Commission decisions are advisory; others are final unless appealed to the El Cerrito City Council. Decisions such as recommendations on whether the City should abandon or vacate a street are advisory; decisions regarding the issuance of use permits are final, unless appealed to the El Cerrito Council.

The City of El Cerrito has a redevelopment agency, which is the El Cerrito City Council reconstituted. As part of the City's comprehensive redevelopment plan, the City has created certain redevelopment "project areas." One such area is Target Area 8, located generally on San Pablo Avenue and Conlon Avenue. (A copy of a portion of a map is enclosed for your convenience.)

Commissioner Bellows has an ownership interest in property which is immediately adjacent to and across the street from Target Area 8. (The area delineated by the highlighted perimeter line.) The title report for this property indicates that the record owners are Frank W. Bellows and Kirstie Kakela Bellows, husband and wife, as their community property; Robert E. Faussner as Trustee of the Robert E. Faussner Trust. For purposes of this advice letter, it should be assumed that Commissioner Bellows' interest in this real property is worth over \$1,000.

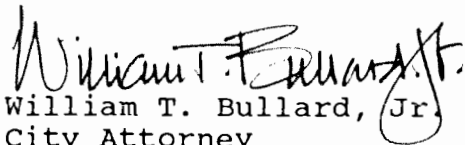
John McLean, Esq.
September 12, 1988
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The staff report from the El Cerrito Executive Director for redevelopment indicates that the land use proposed for Target Area 8 consists of a retail/automotive use project which shall consist of approximately 42,000 square feet and would consolidate approximately ten parcels. In order to accomplish this project, the City of El Cerrito shall be required to abandon portions of two streets and to issue use permits. The El Cerrito Planning Commission shall be obliged to render an advisory decision regarding the street abandonment and decisions on the use permits.

Accordingly, an advice letter is requested as to whether Commissioner Bellows should disqualify himself from participating in the Planning Commission decisions regarding the street abandonments as well as the use permits for Target Area 8.

If you have further questions or request further information or facts, please contact me.

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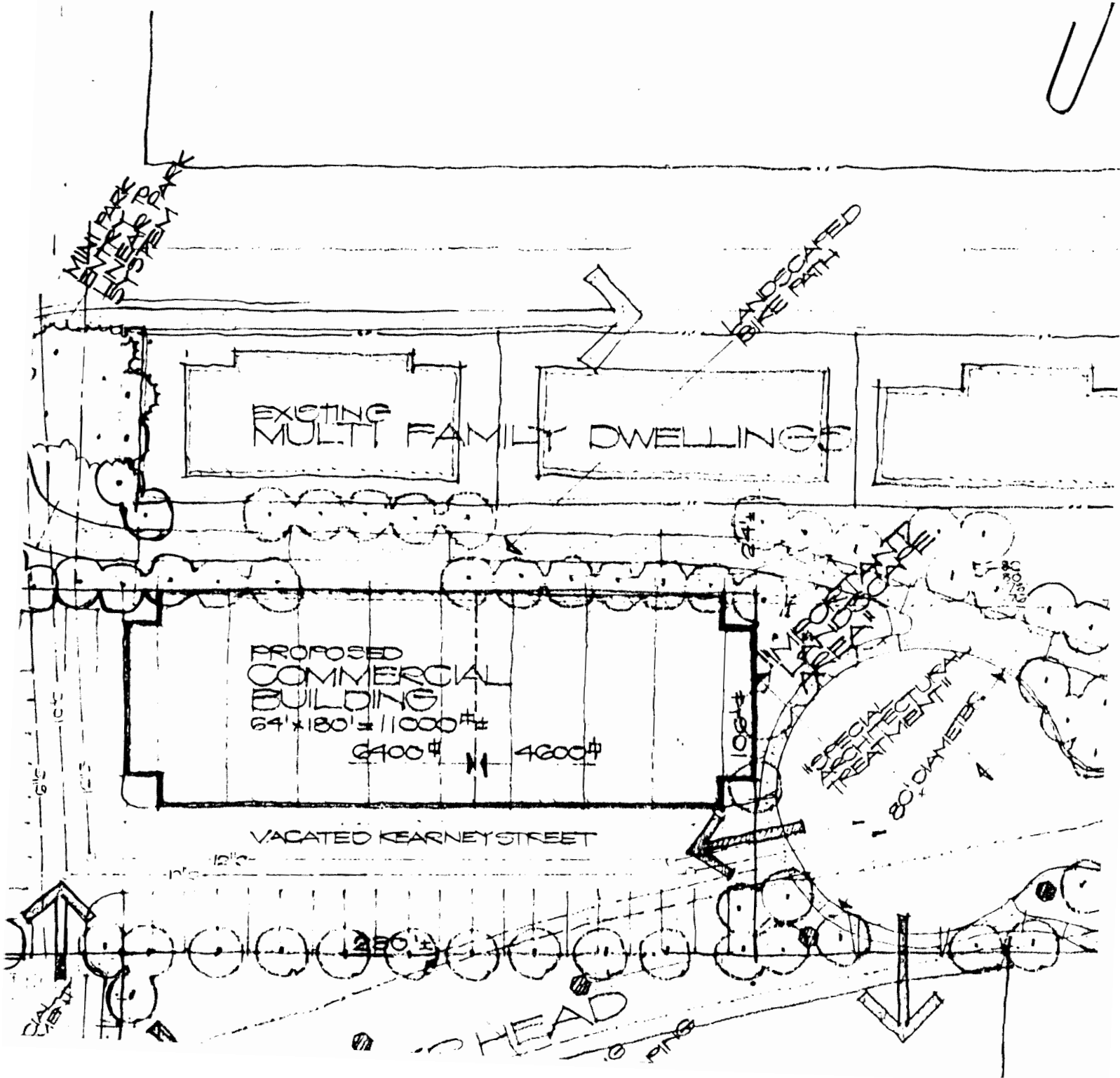

William T. Bullard, Jr.
City Attorney
City of El Cerrito

WTB/laa

Enclosure

cc: Mr. DeWayne Guyer, Planning Director
Mr. Patrick O'Keefe, Executive Director

E6-71



State of California

Memorandum

To : File

Date : October 12, 1988

From : Fair Political Practices Commission
Jeevan Ahuja

Subject: Telecon with Mr. Bullard

On October 6, 1988, I called Mr. Bullard to seek clarification of the layout of the property involved, the distance between the proposed target area and Commissioner Bellows' property and the current use of Commissioner Bellows' property.

Mr. Bullard stated that at its closest point, the target area is about 40 to 45 feet from Commissioner Bellows' property. On the copy of the map (attached to the letter), the target area was located above and to the left of the Bellows property. The distance to the target area in both directions was the same--about 40 to 45 feet.

Finally, Mr. Bullard said that the Bellows' property's current use was commercial in nature.

JA:ld:JMEMO2

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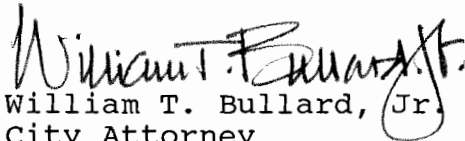
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